Donald Gibson 1995

Chapter One: The "Warren Report" - An Amalgam of Improbabilities

> Never in history have such crimes been "solved" by such a consistent disregard for truth, honesty and credibility, with so much avoidance of the obvious and such dependence upon the incredible and palpably undependable, with such a prostitution of science, and with so much help from misrepresentation and perjury.[1]

The Warren Commission developed and presented to the world a most improbable story. That story, of course, was that Lee Harvey Oswald, acting without accomplices, fired three shots in approximately six seconds from the sixth floor of the Texas School Book Depository. One of the shots hit President Kennedy and Governor John Connally and, after this shot, another one hit the President in the head.[2]

The Warren Commission, officially established as the President's Commission on the Assassination of President Kennedy, was not obligated to establish Oswald's guilt beyond a reasonable doubt; this was not a trial proceeding. They did not establish Oswald's guilt, even though they asserted it, and Commission's own evidence indicated there was an abundance of reasons to doubt that Oswald was a lone assassin or even participated in the

1. Harold Weisberg, Whitewash: The Report on the Warren Report (Hyattstown, MD: self-published, 1965; New York: Dell, 1966), p. 7.

2. Ibid., pp. 167-187.

assassination.[3] Within several years of the publication of the Warren Report in 1964, this story was thoroughly discredited. The Commission's conclusions were shown to be a compilation of plausibilities, implausibilities, improbabilities, and impossibilities.

The destruction of the Warren Commission's story was done in two ways. First, it was shown in a conclusive and overwhelming way that the conclusions of the Commission were inconsistent with the Commission's own presentation of the facts and evidence. Second, it was demonstrated that the Commission ignored, excluded, and suppressed evidence available to it. In the first decade after the assassination, many people contributed to this unpleasant but necessary work, work which brought nothing but difficulty to those involved in it. The list of those who did the painstaking research on the Report or publicly challenged its findings, or did both, would include Harold Weisburg, Vincent Salandria, Gaeton Fonzi, Jim Garrison, Cyril Wecht, Sylvia Meagher, and L. Fletcher Prouty.

The Warren Commission's "conclusion," in the face of some undisclosed internal dissent[4], was that the "shots which killed President Kennedy and wounded Governor Connally were fired by Lee

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3. Gaeton Fonzi, "The Warren Commission, The Truth, and Arlen Specter," Greater Philadelphia Magazine, August, 1966, p. 38.

4. Harold Weisberg, Never Again! (New York: Carroll & Graf Publishers, 1995), pp. 226-229, 326.

Harvey Oswald."[5] This is an artfully worded statement. There is no use of legal terminology, that is, guilty "beyond a reasonable doubt." There are no adjectives, adverbs, or qualifier words. Words like definitely, for certain, beyond a doubt, etc. do not appear. It merely says that a "conclusion" was reached that the shots "were fired by" Oswald. A conclusion can be something like a reasoned judgment or it can be merely a final statement.

What early researchers showed was that this was nothing more than a final statement, a concluding remark. The Commission simply asserted Oswald's guilt. The problem is not that the Commission failed to achieve certainty; this is rare and not even demanded by law in the establishment of guilt. The problem is that the Commission did not even show that there was a probability that its concluding remarks were true. Rather, its own evidence, not to mention the evidence it avoided or suppressed, showed that it was highly improbable that Oswald did these things.

Improbabilty and the Warren Commission's Conclusion

If something is probable, it is likely to be true. Our use of the terms "probability" and "improbability" is not the one familiar to the statistician. In the statistical sense, probability has to do with the likelihood of events in relation to some known or ideal

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5. A Concise Compendium of the Warren Commission Report on the Assassination of John F. Kennedy. Introduction by Robert J. Donovan. (Toronto: Popular Library Edition, 1964), p. 60.

frequencies.[6] That sort of probability, or improbability, had no relevance to most or all of the issues that confronted the Commission. What the Commission was supposed to do, ideally and in conformance with President Johnson's executive order, was to look at all of the relevant facts and evidence and at the relationships between and among those things and render a reasoned judgment, not just concluding remarks, about what most likely happened. This sort of judgment should have flowed directly from answers to certain kinds of questions. Do our judgments and the account we are constructing make sense in relation to our general stock of knowledge and our expeeriences? Does the account make sense in relationship to accepted principles in the sciences? In our account, do the events make sense in relationship to each other? Making sense of things, rendering a reasoned judgment, concluding that something probably happened, was dependent on the most careful attention to evidence and to satisfactory answers to the kinds of questions raised above. It is this sort of probability that was or should have been at issue in the Warren Commission's deliberations. Given all the facts, knowledge, and the best reasoning, what probably happened. How did the Commission do?

The Commission concluded that Oswald did it alone, firing the three shots from the Texas School Book Depository. They said there was persuasive evidence that one of the shots caused both Kennedy's neck wound and all of Connally's wounds. In order to arrive at

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6. Bernard J. F. Lonergan, Insight: A Study of Human Understanding (New York: Philosophical Library, 1970), pp. 299-302.

this conclusion, the Commission had to downplay the fact that the time available to Oswald was too short; that the best of marksmen could not do what the not very proficient Oswald alledgedly did.[7] The judgment here should have been that it was unlikely, near impossible, that Oswald could have done this.

In order to keep the number of shots down to three, a necessity since the Commission was already stretching things in arguing that Oswald had time for the three shots, the Commission had to make a wound in the front of President Kennedy's neck an exit wound. This was also necessary because Oswald was allegedly shooting from behind the President. To keep the number of shots down and to portray the anterior neck wound as one of exit, the Commission simply moved a wound from President Kennedy's back to the back of his neck. This was a most improbable conclusion or aassertion. The holes in JFK's shirt and suit jacket, the observations by Secret Service and FBI agents at the autopsy, the diagram made at the time of the autopsy by Dr. James Humes, and testimony from another autopsy doctor all put the wound in the back about five or six inches below the neck, where it needed to be in order for the Commission to "conclude" what it did.[8] The Commission could not accept the truth, so they did not. They wound up simply asserting that a bullet entered the back of the

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7. Harold Weisberg, Whitewash II: The FBI-Secret Service Coverup (Hyattstown, MD: self-published, 1966), pp. 107, 171; Weisberg, 1995, op cit, p. 4.

8. Fonzi, op cit, p. 81; Vincent Salandria, "The Warren Report-?", Liberation, March, 1965, pp. 16-22; Weisberg, 1966, op cit, pp. 113-114, 119; 1995, op cit, pp. 140-149.

President's neck and exited the front. In all of this they were perhaps aided by the destruction of a first draft of or notes for the autopsy report by Dr. Humes; he burnt it or them.[9]

In the face of strong evidence to the contrary, the Commission now had a bullet going through Kennedy's neck, back to front. This bullet had to do other things. The Commission, a little less emphatic than it sometimes was, said that it was persuaded that this bullet also struck Connally and caused all of his wounds. Even though the Commission did not acknowledge it, this assertion was in fact necessary because there was not enough time for Oswald to have hit Kennedy, when the Commission said he did, and then reload, re-aim and hit Connally. Allen Dulles and John J. McCloy, two of the Commissioners, said that it was they, along with Representative Gerald Ford, who argued that one bullet hit both the President and the Governor. Without this assertion, known later as the single bullet theory, the Commission's entire report was in severe doubt. Three other members of the Commission, Representative Hale Boggs and Senators Cooper and Russell, expressed their doubts about or opposition to this rendition of the events. While the final language of the report reflected the huge problems in this account and/or the opposition of three of the Commission's members, it was weighted heavily in favor of the

9. Weisberg, 1966, op cit, pp.125-126; 1995, op cit, pp. 95-109, 165-169.

Dulles-McCloy-Ford view.[10]

In order to construct this part of their increasingly improbable story, the Commission had to ignore or downplay the evidence showing that the President and Connally were hit by different bullets. For example, Connally was certain that he heard a shot that hit the President before he was hit. Connally's perceptions were consistent with the photographic evidence, the alignment of the two men relative to the alledged source of the shots, the angles of the wounds in the two men, the fact that the bullet had too little damage done to it for it to have hit both men, and the fact that there seemed to be more fragments in the two men than were missing from this bullet.[11] No problem! The Commission said, anyway, that they were persuaded that one bullet hit both men and caused multiple wounds.

One must keep in mind that in order to get to this conclusion the evidence concerning the back wound had to be dismissed. Opinions from medical personnel in Dallas that the anterior neck wound was one of entrance also had to be ignored. All of this was helped by the destruction of the autopsy notes.

There are still other problems. No whole bullet showed up in either of the two men, at least according to the final report, or in the car. So, where did that bullet go? That bullet, later

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10. Edward Jay Epstein, Inquest: The Warren Commission and the Establishment of Truth (New York: Bantam Books, 1966), p. 122.

11. Fonzi, op cit, p. 83; Salandria, op cit, pp. 22-26; Weisberg, 1965, op cit, pp. 167-187; 1966, op cit, pp. 94-96; 1995, op cit, 260-289.

Commission Exhibit (CE) 399, fortunately turned up elsewhere, back in Parkland Memorial Hospital in Dallas. It was found under a mattress that the Commission arbitrarily decided was the one that Connally had been laying on. This would be the only bullet that could be definitely connected to the rifle alledgedly owned and used by Oswald. The evidence for both ownership and use of the gun was very tenuous. It was not and could not be shown that this bullet was fired from the rifle in question on the day of the assassination. This bullet joins the evidence as part of a series of improbabilities, one joined to another.

This would be the bullet which was said to have caused all of the wounds in Connally and at least one in the President. This bullet, found in neither victim, found not at the scene but under a mattress, would be the primary evidence linking the shooting to a gun that Oswald may or may not have purchased, may or may not have ever fired, may or may not have taken to the Book Depository.

This bullet alledgedly entered the back of the President's neck, not the back where evidence clearly indicated a wound, and came out in the front of the neck. The bullet went on to cause numerous wounds in Connally, leaving all too many fragments in the two men, and somehow got out of Connally's leg and under a mattress.[12] Robert Frazier, the FBI's expert, was surprised to find that there was no trace of blood or tissue on the bullet.[13] All of

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12. Harold Weisberg, Whitewash IV: Top Secret JFK Assassination Transcript (Frederick, MD: self-published, 1974), p. 177.

13. Fonzi, op cit, p. 84.

the improbabilities associated with this bullet must be evaluated in relation to the problems around the location of the wounds and the problems related to the timing and sequence of the shots. The Commission was not only building a house with an extremely weak foundation, or no foundation, but was also constructing weak floors, one on top of the other, on this foundation.

The fortuitous discovery of the bullet that could link the gun allegedly owned by Oswald to the assassination and the perhaps convenient destruction of the autopsy notes were not the only unusual events which helped the Commission in making its conclusions. Part of one of the most important pieces of objecitve evidence considered by the Commission, and much evidence was ignored, was also accidentally destroyed. This accident involved the destruction of several crucial frames of the film taken of the assassination by Abraham Zapruder. Among the most important frames of this film are those around frame number 210. These frames had an important bearing on when the President was hit and on Oswald's ability to do the shooting. The second issue concerns the fact that Oswald was not able to see clearly or to see at all the President's car until around frame 210 (assuming the camera ran at the speed the Commission assumed it did). When this film was processed by Life magazine's photo lab, frames 208 to 211 were destroyed and frame 212 was altered. Although there were copies of the original film, presumably unaltered, in the possession of the

FBI and CIA, the Commission used the altered film.[14] If President Kennedy was hit before about frame 210, Oswald could not have been the lone assassin.

Much of the circumstantial evidence indicated that Oswald could not have been on the sixth floor of the Book Depository at the time of the assassination. Weisberg demonstrated that it would have been extremely difficult, if not impossible, for Oswald to have done the shooting, hidden the rifle where it was later found, and gotten down to the second floor lunchroom where he was seen by Officer Marion Baker immediately after the assassination.[15]

Because there was no eyewitness who could reliably put Oswald on the sixth floor during the minutes immediately preceding the assassination, and the circumstantial evidence suggested that he wasn't, any direct evidence of his whereabouts was obviously important, or should of been important. Amazingly enough there was a photograph taken at about the time of the assassination showing the front of the Depository building. Standing there is someone resembling Oswald and wearing a fairly unusual shirt that looked like the one Oswald happened to be wearing that day. Oswald, with no knowledge of this picture, had claimed while in custody that he had come to the second floor lunchroom, where he encountered Baker, from the first floor. There was other circumstantial evidence that

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14. Weisberg, 1966, op cit, pp. 138-139, 215, 219-223, 227; Harold Weisberg, Photographic Whitewash: Suppressed Kennedy Assassination Pictures (Frederick, MD: self-published, 1976), pp. 20-21, 144; Weisberg, 1995, op cit, p. 190.

15. Weisberg, 1965, op cit, pp. 36-38; 1966, op cit, pp. 25, 41-43.

suggested Oswald came up from the first floor to the second rather than down from the sixth where he allegedly did the shooting.[16] In addition, paraffin tests done on Oswald and tests done later with the rifle indicated that Oswald did not fire a rifle on November 22.[17] Like the holes in the President's shirt and suit jacket and the physical evidence relating to the bullet and the shooting itself, this photographic and physical evidence was overridden or ignored.

There were additional problems in the Commission's account of Oswald's behavior and his movements. For example, the Commission claimed that after the assassination and the encounter with Baker, Oswald left the Depository and walked seven blocks in a direction away from his destination, his rented room, and then got on a bus headed right back to the Depository building area, which was now a congested area.[18] What he was doing was never explained.

Weisberg demonstrates that if the facts presented in the Commission's volumes are correct, it was impossible for Oswald to get to the scene of Officer Tippit's murder in time to do it.[19] The unbelievable speed attributed to Oswald in getting to that murder scene and from the sixth to the second floor in the Depository building, becomes an unbelievable laggardness in Oswald's trip from the Tippit murder scene to the theater where he

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16. Weisberg, 1966, op cit, pp. 185-194.

17. Weisberg, 1995, op cit, pp. 335-337.

18. Weisberg, 1965, op cit, p. 53.

19. Weisberg, 1965, op cit, pp. 52-56; 1966, op cit, p. 25.

would be arrested. The Commission's road runner takes thirty minutes to travel the five blocks from the scene of Tippit's murder to the movie theater. Also, in the trip from his rented room to the Tippit murder scene, the Commission again has Oswald initially heading in the wrong direction, waiting briefly for a bus going away from that location.[20]

Those are some of the significant problems in the Warren Commission's account. There were many others. There were other problems in the handling and presentation of medical evidence.[21] The Commission never explained the obvious breakdown in the security arrangements in Dallas on the day of the assassination.[22] Various leads indicating that Oswald had some sort of connection to one or more intelligence organization were not followed up.[23] There were still other areas in which leads were not followed up, the investigation was incomplete, or issues were handled in absurd ways.[24]

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20. Weisberg, 1965, op cit, p. 58; 1966, op cit, p. 25.

21. Cyril H. Wecht," Pathologist's View of JFK Autopsy: An Unsolved Case," Modern Medicine, November 27, 1972, pp. 28-32; Cyril H. Wecht and Robert P. Smith, "The Medical Evidence In The Assassination of President John F. Kennedy, Forensic Science, Vol. 3, 1974, pp. 105-128.

22. L. Fletcher Prouty, JFK: The CIA, Vietnam and the Plot to Assassinate John F. Kennedy (New York: Birch Lane Press/Carol Publishing Group, 1992), pp. 291-295.

23. Jim Garrison, On The Trail Of The Assassins (New York: Sheridan Square Press, 1988), pp. 48, 66-78.

24. Jim Garrison, A Heritage Of Stone (New York: Berkley Publishing Corporation, 1970), pp. 58-65, 101-104, 128-132, 152-156; Garrison, 1988, op cit, pp. 15-21, 54-55, 93-99, 111-112, 196, 209, 216, 244; Sylvia Meagher, Accessories After the Fact:

What all of this adds up to is that the Commission never came close to showing that Oswald, firing three shots from the Depository building, was a lone assassin. Instead, their own evidence, although not their concluding remarks, suggested that it was highly improbable that this story was true. We can apply the term probable in another way that might be useful. That is, if the Warren Commission was really operating to discover the truth, is it probable that they would construct the kind of story they did and in the way they did it?

If the Commission wanted the truth, they would have deepened and expanded the investigation when confronted with evidence that Oswald could not have done this shooting in six seconds, even if only three shots were fired. They did not. If the Commission wanted the truth, they would have become energetic and determined to clear up the incredible problems in the evidence concerning the wounds and in the evidence suggesting that there were more than three shots fired. They did not. If the Commission was "for real", they would have found these and other problems sufficient to raise serious questions. Most of those involved did not raise those questions. Instead, the Commission bent, ignored, twisted, massaged, misrepresented, and suppressed evidence in order to create an account which did pile one improbability on top of another.

The handling of the evidence relating to wounds, timing, guns

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The Warren Commission, The Authorities & The Report (New York: Vintage Books/Random House, 1967), passim.

and bullets, Oswald, and a host of other things does make sense if the Warren Commission was creating a cover story. Their actions are highly improbable if one assumes or believes that their mission was the construction of a valid account. The Commission, and the FBI, failed to examine seriously and/or to preserve as evidence thousands of frames of film taken at the scene before, during, or after the assassination. As Weisberg points out, this by itself discredits the Commission.[25] The Commission did not even obtain and preserve a direct copy of the original Zapruder film.[26] The Commission had conflicting information about the speed setting of Zapruder's camera, which had a direct bearing on the timing of the shots, and did not even bother to resolve the conflict.[27]

Neither the Commission nor the FBI followed up information indicating that someone had been passing himself as Oswald. Information about this from the Dallas police investigators was excluded from the report.[28] Some of the examples of the Commission's mishandling of evidence suggest intent.[29] There are examples of work done by individual lawyers wherein the performance is so shoddy that it raises questions about the intent of the lawyers involved or the intent of those giving direction to those

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25. Weisberg, 1976, op cit, pp. 30, 42-63, 78-94, 119-120, 136.

26. Weisberg, 1966, op cit, 212-213.

27. Weisberg, 1976, op cit, p. 142.

28. Weisberg, 1966, op cit, pp. 52-53.

29. Weisberg, 1966, op cit, 71-87, 99, 121, 132, 218-219; 1974, op cit, p. 214; 1976, op cit, pp. 301-304; 1995, op cit, pp. 138, 243, 384.

lawyers.[30]

The Commission and the FBI failed to investigate a series of relationships that Oswald was involved in while in New Orleans. Since the release of Oliver Stone's movie, JFK, these names have become famous. There was information available to the Commission concerning Oswald's connections to David Ferrie and Guy Banister, and the Commission had information that could have led them to Clay Shaw. These leads were not pursued.[31] The decision not to pursue these areas allowed the Commission to avoid facts and testimony that led to the murky world of government and private intelligence operations.

A variety of explanations have been offered for the Commission's failures, attributing motives to Commission members and subordinates that range from the essentially innocent to the most sinister. In order to decide whether the Commission's failure was a product of conscious intent or the innocent and unintended result of one or more circumstances of its operations, it is necessary to do something that has not been done and, to a considerable extent, could not be done until 1993. We need to examine the way in which the Commission was created and the process by which the members of the Commission and its staff were selected. If there was an intended cover-up, as Garrison, Prouty, Salandria,

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30. Weisberg, 1965, op cit, pp. 36, 56, 173-178; 1966, op cit, pp. 94-96, 107-108, 138-140; Harold Weisberg, Oswald in New Orleans (New York: Canyon Books, 1967), pp. 172, 218.

31. Garrison, 1970, op cit, pp. 102-104; 1988, op cit, pp. 56-57; Weisberg, 1967, op cit, pp. 64-65, 203-206, 389-394.

Weisberg, and others have argued there was, then the creation, makeup, and method of operation of the Commission itself are of the utmost importance.

We need to know who it was that initiated the idea of the Presidential Commission and who it was that decided its makeup. Where possible, we need to connect its origin and its participants to the decisions that led to the kind of investigation it did and the kind of report that it produced. If we can establish the identity of the coverup team with a high level of certainty, we can then examine that team in relationship to John Kennedy's actions and policies and to President Kennedy's known opponents and enemies. Throughout, we will be interested in evidence that links each stage of the coverup with the others. Then, we will be in a position to address some of the important questions still unanswered more than thirty years after the assassination.

We turn first to the origin of the "Warren Commission," relying extensively on the now public record of events between November 22 and November 28, 1963. As we will see eventually, this Commission would have been more accurately named the Rostow Commission or the McCloy-Dulles Commission. As we shall also see, this should be thought of more as a blue-blood than a blue-ribbon commission.